

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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MARCUS & CINELLI, LLP,

Plaintiff,

v.

23-CV-1037 (JLS) (JJM)

ASPEN AMERICAN INSURANCE,

Defendant.

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**DECISION AND ORDER**

Plaintiff Marcus & Cinelli, LLP commenced this action on September 29, 2023—seeking a declaration ordering its professional liability insurance carrier, Defendant Aspen American Insurance Company, to defend and indemnify it in a state court action. Dkt. 1. On November 30, 2023, Defendant moved to dismiss the Complaint. Dkt. 11. Plaintiff responded in opposition to Defendant’s motion, Dkt. 19, and Defendant replied. Dkt. 22. Plaintiff also moved for partial summary judgment on December 29, 2023. Dkt. 20. Defendant responded, Dkt. 22, and Plaintiff replied. Dkt. 29. On March 4, 2024, Judge McCarthy<sup>1</sup> held oral argument on the pending motions and gave his tentative ruling. Dkt. 32. The parties subsequently filed supplemental briefs, addressing Judge McCarthy’s tentative ruling. *See* Dkt. 32–35.

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<sup>1</sup> This Court referred the case to United States Magistrate Judge Jeremiah J. McCarthy for all proceedings under 28 U.S.C. §§ 636(b)(1)(A), (B), and (C). Dkt. 13.

On May 10, 2024, Judge McCarthy issued a Report and Recommendation (“R&R”), recommending that this Court grant Defendant’s motion to dismiss, without leave to amend, and deny Plaintiff’s motion for partial summary judgment. Dkt. 36, at 7.<sup>2</sup> On May 24, 2024, Plaintiff objected to the R&R, arguing that this Court “decline to accept the R&R.” Dkt. 37, at 12. Defendant responded to Plaintiff’s objections, Dkt. 39, and Plaintiff replied. Dkt. 40.

A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). A district court must conduct a *de novo* review of those portions of a magistrate judge’s recommendation to which a party objects. *See* 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b)(3). But neither 28 U.S.C. § 636 nor Federal Rule of Civil Procedure 72 requires a district court to review the recommendation of a magistrate judge to which no objections are raised. *See Thomas v. Arn*, 474 U.S. 140, 149–50 (1985).

This Court carefully reviewed the R&R, the objections briefing, and the relevant record. Based on its *de novo* review, the Court accepts and adopts Judge McCarthy’s recommendation.

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<sup>2</sup> The page numbers refer to the CM/ECF pagination in the header of each page.

For the reasons stated above, and in the R&R, this Court GRANTS Defendant's motion to dismiss, without leave to amend, and DENIES Plaintiff's motion for partial summary judgment.<sup>3</sup> The Clerk of Court is directed to close the case.

SO ORDERED.

Dated: September 25, 2024  
Buffalo, New York



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JOHN L. SINATRA, JR.  
UNITED STATES DISTRICT JUDGE

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<sup>3</sup> The Court also notes that Defendant's "fee dispute" argument—that the policy provides no coverage in the first instance—provides an additional reason for dismissal.